



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION
Advisory Opinion
No. 09-09-011

A member of the Board of Appeals has asked the Commission for an advisory opinion.¹ The member is an attorney in private practice in Montgomery County. The member represents an entity that provides training. Some of the individuals who take the training pay for the training with funds received through the County's Tuition Assistance Program. Accordingly, the member's client receives, directly or indirectly, money from the County to provide training to County employees.² The Commission concludes that the member's representation of the client in connection with matters involving the Tuition Assistance Program would violate § 2-109, because § 2-109 prohibits a member of the Board of Appeals from acting as an attorney for a client in that client's business dealings with the County.

The member asked the Commission to advise whether the member may continue to represent the client, because the client is being investigated by the Office of the County Attorney and the Inspector General in connection with certain training for which the client received funds under the Tuition Assistance Program. The member indicates that no formal charges or legal action has been initiated against the member's client. The member indicates that the client's position is to "cooperate with the investigation, answer whatever questions are posed to them, and to assist as much as possible in the hopes of defraying any potential, subsequent action." The member asserts that "they [the client] have done nothing wrong."

The member posits that representation of the client would not "run afoul of the County's ethics law, in that, at this time, the matter is strictly an investigation and my clients are cooperating. There are no adversarial or confrontational positions taken at this time."

The Commission concludes that the member may not represent the client in any aspect of the client's relationship with the County in connection with the Tuition Assistance Program, including the investigation currently being undertaken by County agencies. The reason the Commission has reached this conclusion is that members of the Board of Appeals are prohibited from acting as an attorney to any person in connection to that person's "business dealings" with the County.

¹ Under § 19A-7, the Commission is required to provide a person with an advisory opinion on the application of the Ethics Law (Chapter 19A) and § 2-109 (a Code of Ethics applicable to members of the Board of Appeals) to that person in connection with the matter raised in the opinion request.

² The County's Tuition Assistance booklet states that once an employee receives an "authorization letter" from the Office of Human Resources, the employee should take the letter to the provider of the training. The booklet advises, "The letter is a contract that authorizes the school to bill the County directly for tuition fees."

Section 2-109 sets out a code of ethics specifically applicable to the Board of Appeals. Section 2-109 (b) (2) provides that “No member shall: . . . [a]ct as broker, agent, attorney, representative or employee of any person in his business dealings with the County” Although Section 2-109 does not define the phrase “business dealings with the County,” the Commission believes that receiving direct or indirect payments under the County’s Tuition Assistance Program constitutes business dealings with the County.

In reaching this conclusion, the Commission has looked to the ordinary and usual meaning of the term “business”, and notes that the definition of business includes the buying and selling of services.³ This definition of “business” is consistent with the definition of the phrase “doing business with” that is set out in the general County Ethics Law. Section 19A-4(e) defines “doing business with” as:

- (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year;
- (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or
- (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year.

In the Commission’s view, the member’s client, by accepting payment from the County in exchange for providing training to County employees, has engaged in a monetary transaction in which the County is a participant. Consequently, the client is engaging in “business dealings with the County” within the meaning of § 2-109 (b) (2).

Because Section 2-109(b)(2) provides definitive guidance on this matter, the Commission has not found it necessary to interpret, in the context of the member’s request, the meaning of Section 19A-14(g) (a public employee must not represent another person if the County has a direct and substantial interest in the matter that is “adverse” to the interest of the person being assisted); or Section 2-109(b)(4) (a member of the Board of Appeals must not represent a “private interest” that is “against the interests of the County”).

In reaching this decision, the Commission has relied on the facts as set out in this opinion.

MONTGOMERY COUNTY ETHICS COMMISSION



Antar C. Johnson, Chair

September 28, 2009

Date

³ See Webster’s New World Dictionary of the American Language, College Edition. See also, *Rettig v. State*, 334 Md. 419 (1994) (when interpreting a statute, a court assumes that words used have their ordinary and natural meaning).